

### REMARKS

In the Final Office Action mailed on May 29, 2007, and Advisory Action mailed August 7, 2007, claims 1-6, 8-19, 27-32 and 34-35 were pending and stand finally rejected. In this preliminary amendment submitted with an RCE, claims 1, 5, 6, 8, 9, 10, 12, 13, 19, 27, 31 and 32 are amended, and claims 36-38 have been added. Reconsideration of and allowance of the present application as amended and including claims 1-6, 8-19, 27-32 and 34-38 is respectfully requested.

Claims 1-6, 8-19 and 27-32 and 34-35 were rejected under 35 USC §102(b) as anticipated by U.S. Patent No. 5,484,437 to Michelson. Claim 1 has been amended above. Support for the amendment is found at least at paragraph [0125] and Figures 38-46, 50-52. Amended claim 1 clarifies the location and nature of the communication between the working channel ports of the distal portion. Specifically, claim 1 recites "a guide sleeve housing including a proximal portion and a distal portion, said proximal portion including an inner wall defining a proximal chamber, said housing further including a first working channel port and a second working channel port extending through said distal portion and extending distally from and forming an extension of said proximal chamber, wherein said first and second working channel ports are in communication with one another through said distal portion to together form an oval shaped working channel port through said distal portion". There is no disclosure of these features in Michelson. The Advisory Action asserts that the previous version of claim 1 did not necessarily imply that the chambers are connected to one another. Amended claim 1 should make it clear that the first and second working channel ports extend distally from and form an extension of the proximal chamber. Amended claim 1 also makes it clear that the first and second working channel ports communicate with one another through the distal portion of the guide sleeve housing so that together the first and second working channel portions form an oval shaped working channel port through the distal portion.

With regard to claim 1, the Final Office Action asserts with reference to Fig. 7F of Michelson that Michelson discloses "said housing further including a first working channel port (Fig. 7F, longitudinal opening of near, 100) and a second working channel port (Fig. 7F, longitudinal opening near ref, 348) extending through said distal portion in communication with one another (Fig. 7F) and in communication with said proximal chamber (Fig. 7F)...."

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Fig. 7F is a side sectional view of the Dual Outer Sleeve of Figs. 7C and 7D, the Distractors, and the Dual Cap of Fig. 7E seated on the proximal end of the Dual Outer Sleeve. See col. 11, lines 39-41. Michelson discloses that element 100 is a long distractor, and Fig. 7F shows a pair of long distractors 100 received in a respective passage of one of the pair of hollow tubes of Dual Outer Sleeve 340. Dual Outer Sleeve 340 includes two hollow tubular members that are parallel and have a space 350 between them. See col. 27, line 61 to col. 28, line 16. Dual Driver Cap 420 of Fig. 7E includes a distal oval opening to engage the proximal end of Dual Outer Sleeve 340 and an area 354 that includes a pair of circular recesses in the cap to receive proximal crown or heads 110 of distractors 100. See col. 28, lines 31-44.

A review of the specification of Michelson reveals that Michelson fails to disclose the arrangement of elements recited in claim 1. Michelson discloses the hollow tubes of Dual Outer Sleeve 340 each include proximal and distal circular openings, and an elongated longitudinal passage between the end openings. Each of the passages of the hollow tubes is enclosed by the hollow tube and is isolated from the other by the wall of the respective tube. There is no disclosure that the passages of the hollow tubes are arranged "wherein said first and second working channel ports are in communication with one another through said distal portion to together form an oval shaped working channel port through said distal portion" as recited in claim 1. Whether or not the passages of the tubes in Michelson are able to communicate by delivery of substances or information, by vibration, or by delivery of fluid as asserted in the Advisory Action, there is no disclosure that the passages communicate with one another through the tubes to together form an oval shaped working channel port through the tubes.

In fact, Michelson discloses an area 354 between the hollow tubes so that the tubes are spaced from one another. The Final Office Action also asserts "wherein said first and second working channel ports together form a substantially oval cross-sectional shape (Fig. 7E)." In contrast to the assertions in the Final Office Action, Fig. 7E is a bottom view of a Dual Driver Cap 420 for driving two distractors. See col. 11, lines 37-38. The driver cap is positioned on the proximal ends of the tubes, and thus cannot be properly considered to form an extension of and extend distally from the proximal portion of the tubes of Michelson. Accordingly, for this additional reason, withdrawal of the rejection of claim 1 is respectfully requested.

Claims 2-6 and 8-19 depend from claim 1 and are allowable at least for the reasons claim 1 is allowable for the reasons provided in previous response which will not be repeated herein and for additional reasons. For example, amended claim 5 recites "further comprising a housing inserter including a distal engaging portion and a handle extending proximally from said distal engaging portion and wherein said guide sleeve housing is removably engageable to said distal engaging portion of said housing inserter." A review of Michelson does not provide an indication of a spinal instrument assembly including a housing inserter with the features positively recited in claim 5. Support for the amendments to claim 5 can be found at, for example, paragraphs [0128], [0129], [0134], [0135] and Figures 40-50.

Claim 6 has been amended to recite "distractor" prior to tip to maintain consistency with claim 1.

Amended claim 8 now depends from claim 6 and recites "wherein said housing inserter includes a passageway opening at a proximal end of said handle and at a distally oriented face of said engaging portion, and wherein said shaft of said central distractor is sized for receipt in said passageway so that said housing inserter and said guide sleeve housing are movable along said shaft toward said distractor tip to position said guide sleeve housing in said operative position." Support for the amendments to claim 8 can be found, for example, in paragraphs [0128]-[0131] and Figures 40-47. Michelson also fails to disclose a housing inserter with these features.

Amended claim 9 recites "wherein said proximal portion of said guide sleeve housing defines a groove formed in said inner wall that defines said proximal chamber." Support for the amendment can be found in Figure 34 and at paragraphs [0116], [0132] and [0135], for example. The amendments to claim 9 should make it clear that a curved inner surface is not sufficient alone to disclose a groove formed in the inner surface as recited in claim 9 since a curved inner surface alone does not include any structure that is also groove formed in the inner surface. Furthermore, claim 10 depends from claim 9 and recites "wherein said central distractor includes a housing engaging portion with a finger received in a receptacle, said finger being movable from a location in said receptacle to a location projecting from said receptacle to removably engage said groove of said guide sleeve housing." Support for the amendment to claim 10 can be found at least in Figures 48-51 and paragraphs [0134]-[0136]. There is also no disclosure of any distractor that includes these features. Thus, claims 9 and 10 are also allowable.

Furthermore, claim 11 depends from claim 10 and recites "said central distractor tip includes a reduced height configuration whereby said upper and lower distraction surfaces are orientable away from vertebral endplates of a spinal disc space and said finger is not engaged to said guide sleeve housing; and said central distractor tip is rotatable to a distraction configuration from said reduced height configuration whereby said upper and lower distraction surfaces are orientable toward vertebral endplates of a spinal disc space and said finger is actuated and received in said groove thereby coupling said guide sleeve housing to said central distractor." Claim 11 is also allowable for the reasons provided in the previous response.

Amended claim 12 recites "wherein said guide sleeve housing is removably engageable to a housing inserter, said housing inserter including a finger, a shaft coupled to and extending proximally from said finger, and an actuation handle coupled to a proximal end of said shaft, said finger being movable with said actuation handle to removably engage said housing inserter to said guide sleeve housing." Support for the amendment to claim 12 can be found at, for example, paragraphs [0128]-[131] and Figures 40-47. Claim 12 positively recites features of a housing inserter, and Michelson also fails to disclose a housing inserter with these features. The Final Office Action does not identify any structure in Michelson corresponding to a housing inserter or any structure having the structural features of the housing inserter recited in claim 12. Claim 13 depends from claim 12 and has been amended to clarify "wherein said central distractor includes a shaft extending proximally from said distractor tip" in addition to previously reciting "wherein said housing inserter and said guide sleeve housing are positionable over a proximal end of said shaft of said central distractor and movable therealong to position said guide sleeve housing in an operative position adjacent the spinal disc space." Since there is no disclosure of a housing inserter in combination with the Dual Outer Sleeve 340 and Dual Driver Cap 420, there is no disclosure of the features recited in claim 13. Accordingly, claims 12 and 13 are allowable.

Amended claim 27 recites "a shaft; an engaging portion at a distal end of said shaft releasably engageable with a member positioned about said engaging portion, wherein said member is a guide sleeve housing defining first and second access ports therethrough for accessing a spinal disc space with said engaging portion removed therefrom, said guide sleeve housing including a proximal portion defining a proximal chamber and a distal portion defining said first and second access ports

as a distal extension of said proximal chamber; and a distractor tip extending distally of said engaging portion, wherein said engaging portion is enlarged and extends outwardly from each of said shaft and said distractor tip, said enlarged configuration being sized and shaped to fit in said proximal chamber with a close interfit to provide a rigid assembly between said engaging portion and said guide sleeve housing." Support for the amendments can be found, for example, paragraphs [0128]-[0130] and [0134]-[0136] and Figures 40-43 and 47-52. A review of Michelson finds no disclosure of the combination of elements recited in claim 27. If the shaft 100 is considered to be the enlarged portion that is received in the proximal chamber in a close interfit therewith, there are no first and second access ports defining a distal extension of the chamber receiving shaft 100. Withdrawal of the rejection of claim 27 is respectfully requested.

Claims 28-32 and 34-35 depend from claim 27 and are allowable at least for the reasons claim 27 is allowable and for other reasons. For example, amended claim 31 recites "wherein said engaging portion includes a receptacle formed therein and a finger movable out of said receptacle to an engagement position wherein said finger engages said guide sleeve housing in said proximal chamber and wherein said finger is movable to a release position into said receptacle to release said guide sleeve housing from said engaging portion." Amended claim 32 recites "wherein said distractor tip is rotatable relative to said engaging portion with said shaft, said distractor tip having a distraction configuration which positions said finger in said engagement position and said distractor tip is rotatable from said distraction configuration to a reduced height configuration by rotating said shaft relative to said engaging portion, wherein rotation of said shaft also moves said finger to said release position." Support for the amendments to claims 31-32 can be found at least in Figures 48-51 and paragraphs [0134]-[0136]. As discussed above, Michelson does not disclose any engaging portion that includes these features, including a finger that is movable into and out of a receptacle formed in an engaging portion that engages a guide sleeve housing. Nor is there any disclosure of the finger that is moved into and out of the receptacle of the engaging portion by rotation of the shaft of the distractor. Accordingly, claims 31-32 are not disclosed in Michelson, and withdrawal of the rejection of claims 28-32 and 34-35 depending from claim 27 is respectfully requested.

New claims 36-38 are added in this response. Support for claim 36 can be found in original claim 1 and also throughout the specification and drawings, including, for example,

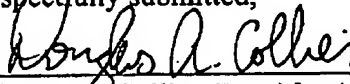
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Figures 33-52 and the corresponding sections of the specification, including paragraph [0116] which discloses the proximal portion of the guide housing lacking any medial wall between the first and second ports extending through the proximal portion of the guide sleeve housing. Support for claim 37 can be found, for example, in Figure 36 and paragraph [0117]. Support for claim 38 can be found, for example, at Figures 39-46 and 50-53 and the corresponding discussion in the specification. New claims 36-38 recite a combination of elements not disclosed or suggested by the cited references.

In view of the foregoing remarks, it is respectfully submitted that the present application is in condition for allowance with pending claims 1-6, 8-19, 27-32 and 34-38. Reconsideration of the present application is respectfully requested. Timely action towards a Notice of Allowance is hereby solicited. The Examiner is encouraged to contact the undersigned by telephone to resolve any outstanding matters concerning the present application.

Respectfully submitted,



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